



September 6, 2000

Mr. Wiley B. McAfee
Police Legal Advisor
City of Irving Police Department
P.O. Box 152288
Irving, Texas 75015-2288

OR2000-3443

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138731.

The Irving Police Department (the "department") received a request for (1) a copy of citizen complaints and/or disciplinary actions filed against Officer Romana Gutierrez and (2) a copy of documents and a video concerning an incident involving the requestor on a specified date. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code and pursuant to Local Government Code section 143.089(g). We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing your claims regarding the information requested in the first portion of the request. The requestor seeks a copy of citizen complaints and/or disciplinary actions filed against Officer Romana Gutierrez. You state that the responsive information consists of internal affairs files. As such, you argue the information is excepted from disclosure under Local Government Code section 143.089(g). We note, however, that you have failed to submit to this office the specific information requested or representative samples. Pursuant to section 552.301(e)(1)(D), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Thus, you have failed to comply with section 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling

reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352.

Next, we consider the information responsive to the second portion of the request. The requestor seeks documents and a video concerning an incident involving the requestor. You have submitted an incident report, a supplementary report, an incident activity summary, and an NCIC Radio Log sheet; all of these documents pertain to the specific incident described by the requestor. You argue that this information is excepted from disclosure under Government Code section 552.108.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" You indicate that the information at issue relates to a case which "did not result in a conviction or deferred adjudication." Based on your representation and our review of the information, we conclude that, with the exception of basic information which must be released as explained below, you may withhold the information pursuant to section 552.108(a)(2).

Section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the requested report. Thus, with the exception of the basic front page offense information which must be disclosed, you may withhold the submitted information based on subsection 552.108(a)(2). Although section 552.108(a) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the information responsive to the first portion of the request--complaints and/or disciplinary actions filed against Officer Romana Gutierrez--must be released to the

requestor. Except for basic information, the information responsive to the second portion of the request may be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Julie Reagan Watson" with a long horizontal flourish extending to the right.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138731

Encl. Submitted documents

cc: Mr. Michael McGoldrick
2006 Nightview Drive
Pflugerville, Texas 78660
(w/o enclosures)